

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 383**

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**Introduced by Senator Jackson**

February 20, 2013

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An act to amend ~~Section 1354~~ *Sections 1747.02 and 1747.08* of the Civil Code, relating to ~~common interest developments~~; *credit cards*.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Jackson. ~~Common interest developments~~. *Credit cards: downloadable products: personal information.*

*The Song-Beverly Credit Card Act of 1971 generally regulates credit card transactions and prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder write any personal identification information, as defined, upon the credit card transaction form or otherwise. Existing law prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder provide his or her personal identification information to the person or entity to be written or caused to be written upon the credit card transaction form or otherwise. Notwithstanding those provisions, existing law authorizes a person or entity that accepts credit cards for the transaction of business to require the cardholder, as a condition to accepting the credit card, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, provided that the information is not written or recorded on the credit card transaction form or otherwise. Existing law authorizes the use of ZIP Code information in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island with*

*an automated cashier that uses the ZIP Code information solely for prevention of fraud, theft, or identity theft.*

*This bill would authorize a person or entity that accepts credit cards in an online transaction involving an electronically downloadable product, as defined, to require a cardholder, as a condition to accepting a credit card as payment in full or in part for goods or services, to provide the billing ZIP Code and street address number associated with the credit card, if used solely for the prevention of fraud, theft, or identity theft. The bill would require that person or entity to destroy or dispose of the ZIP Code and street address number information in a secure manner after it is no longer needed for the prevention of fraud, theft, or identity theft. The bill would further prohibit that person or entity from aggregating the ZIP Code and street address number information with any other personal identification information, as defined, and from sharing the ZIP Code and street address number information with any other person or entity.*

~~Existing law provides that the covenants and restrictions in the declaration of a common interest development are enforceable equitable servitudes, unless unreasonable, that inure to the benefit of and bind all owners of separate interests in the development. Existing law authorizes the owner of a separate interest in a common interest development to enforce a governing document against the association, except as specified, and the association to enforce a governing document against the owner of a separate interest, except as specified.~~

~~This bill would make a nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. (a) *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (1) *The Song-Beverly Credit Card Act of 1971 establishes*
- 4     *privacy and other protections for cardholders. These protections*
- 5     *prohibit a person, firm, partnership, association, or corporation*
- 6     *from requesting or requiring a cardholder to provide personal*
- 7     *identification information in a credit card transaction, with*
- 8     *specified, limited exceptions.*

1     (2) *The Song-Beverly Credit Card Act of 1971 applies to credit*  
2 *card transactions without reference to the method, platform, or*  
3 *technology used to process or to complete the transaction.*

4     (3) *The California Supreme Court, in Apple Inc. v. Superior*  
5 *Court (2013) 56 Cal.4th 128, declared the Song-Beverly Credit*  
6 *Card Act of 1971 not applicable to an online transaction involving*  
7 *a downloadable product. As a result, the privacy protections of*  
8 *the act do not apply to those transactions.*

9     (b) *It is the intent of the Legislature to apply the provisions of*  
10 *the Song-Beverly Credit Card Act of 1971 to all credit card*  
11 *transactions, including online transactions involving a*  
12 *downloadable product.*

13     SEC. 2. *Section 1747.02 of the Civil Code is amended to read:*  
14     1747.02. As used in this title:

15     (a) “Credit card” means any card, plate, coupon book, or other  
16 single credit device existing for the purpose of being used from  
17 time to time upon presentation to obtain money, property, labor,  
18 or services on credit. “Credit card” does not mean any of the  
19 following:

20     (1) Any single credit device used to obtain telephone property,  
21 labor, or services in any transaction under public utility tariffs.

22     (2) Any device that may be used to obtain credit pursuant to an  
23 electronic fund transfer, but only if the credit is obtained under an  
24 agreement between a consumer and a financial institution to extend  
25 credit when the consumer’s asset account is overdrawn or to  
26 maintain a specified minimum balance in the consumer’s asset  
27 account.

28     (3) Any key or card key used at an automated dispensing outlet  
29 to obtain or purchase petroleum products, as defined in subdivision  
30 (c) of Section 13401 of the Business and Professions Code, that  
31 will be used primarily for business rather than personal or family  
32 purposes.

33     (b) “Accepted credit card” means any credit card that the  
34 cardholder has requested or applied for and received or has signed,  
35 or has used, or has authorized another person to use, for the purpose  
36 of obtaining money, property, labor, or services on credit. Any  
37 credit card issued in renewal of, or in substitution for, an accepted  
38 credit card becomes an accepted credit card when received by the  
39 cardholder, whether the credit card is issued by the same or a  
40 successor card issuer.

1 (c) “Card issuer” means any person who issues a credit card or  
2 the agent of that person for that purpose with respect to the credit  
3 card.

4 (d) “Cardholder” means a natural person to whom a credit card  
5 is issued for consumer credit purposes, or a natural person who  
6 has agreed with the card issuer to pay consumer credit obligations  
7 arising from the issuance of a credit card to another natural person.  
8 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term  
9 includes any person to whom a credit card is issued for any  
10 purpose, including business, commercial, or agricultural use, or a  
11 person who has agreed with the card issuer to pay obligations  
12 arising from the issuance of that credit card to another person.

13 (e) “Retailer” means every person other than a card issuer who  
14 furnishes money, goods, services, or anything else of value upon  
15 presentation of a credit card by a cardholder. “Retailer” shall not  
16 mean the state, a county, city, city and county, or any other public  
17 agency.

18 (f) “Unauthorized use” means the use of a credit card by a  
19 person, other than the cardholder, (1) who does not have actual,  
20 implied, or apparent authority for that use and (2) from which the  
21 cardholder receives no benefit. “Unauthorized use” does not include  
22 the use of a credit card by a person who has been given authority  
23 by the cardholder to use the credit card. Any attempted termination  
24 by the cardholder of the person’s authority is ineffective as against  
25 the card issuer until the cardholder complies with the procedures  
26 required by the card issuer to terminate that authority.  
27 Notwithstanding the above, following the card issuer’s receipt of  
28 oral or written notice from a cardholder indicating that it wishes  
29 to terminate the authority of a previously authorized user of a credit  
30 card, the card issuer shall follow its usual procedures for precluding  
31 any further use of a credit card by an unauthorized person.

32 (g) ~~An “inquiry” is~~ “Inquiry” means a writing that is posted by  
33 mail to the address of the card issuer to which payments are  
34 normally tendered, unless another address is specifically indicated  
35 on the statement for that purpose, then to that other address, and  
36 that is received by the card issuer no later than 60 days after the  
37 card issuer transmitted the first periodic statement that reflects the  
38 alleged billing error, and that does all of the following:

39 (1) Sets forth sufficient information to enable the card issuer to  
40 identify the cardholder and the account.

1 (2) Sufficiently identifies the billing error.

2 (3) Sets forth information providing the basis for the  
3 cardholder's belief that the billing error exists.

4 (h) ~~A "response" is~~ "*Response*" means a writing that is  
5 responsive to an inquiry and mailed to the cardholder's address  
6 last known to the card issuer.

7 (i) ~~A "timely response" is~~ "*Timely response*" means a response  
8 that is mailed within two complete billing cycles, but in no event  
9 later than 90 days, after the card issuer receives an inquiry.

10 (j) ~~A "billing error"~~ "*Billing error*" means an error by omission  
11 or commission in (1) posting any debit or credit, or (2) in  
12 computation or similar error of an accounting nature contained in  
13 a statement given to the cardholder by the card issuer. ~~A "billing~~  
14 "*Billing error*" does not mean any dispute with respect to value,  
15 quality, or quantity of goods, services, or other benefit obtained  
16 through use of a credit card.

17 (k) "Adequate notice" means a printed notice to a cardholder  
18 that sets forth the pertinent facts clearly and conspicuously so that  
19 a person against whom it is to operate could reasonably be expected  
20 to have noticed it and understood its meaning.

21 (l) "Secured credit card" means any credit card issued under an  
22 agreement or other instrument that pledges, hypothecates, or places  
23 a lien on real property or money or other personal property to  
24 secure the cardholder's obligations to the card issuer.

25 (m) "Student credit card" means any credit card that is provided  
26 to a student at a public or private college or university and is  
27 provided to that student solely based on his or her enrollment in a  
28 public or private university, or is provided to a student who would  
29 not otherwise qualify for that credit card on the basis of his or her  
30 income. A "student credit card" does not include a credit card  
31 issued to a student who has a cocardholder or cosigner who would  
32 otherwise qualify for a credit card other than a student credit card.

33 (n) "Retail motor fuel dispenser" means a device that dispenses  
34 fuel that is used to power internal combustion engines, including  
35 motor vehicle engines, that processes the sale of fuel through a  
36 remote electronic payment system, and that is in a location where  
37 an employee or other agent of the seller is not present.

38 (o) "Retail motor fuel payment island automated cashier" means  
39 a remote electronic payment processing station that processes the  
40 retail sale of fuel that is used to power internal combustion engines,

1 including motor vehicle engines, that is in a location where an  
2 employee or other agent of the seller is not present, and that is  
3 located in close proximity to a retail motor fuel dispenser.

4 (p) *“Online transaction involving an electronically*  
5 *downloadable product” means a credit card transaction for a*  
6 *product, service, subscription, or any other consideration, in which*  
7 *the product, service, subscription, or consideration is provided by*  
8 *means of a download to the cardholder’s computer, telephone, or*  
9 *other electronic device.*

10 SEC. 3. Section 1747.08 of the Civil Code is amended to read:

11 1747.08. (a) Except as provided in subdivision (c), ~~no~~ a person,  
12 firm, partnership, association, or corporation that accepts credit  
13 cards for the transaction of business ~~shall~~ may not do any of the  
14 following:

15 (1) Request, or require as a condition to accepting the credit  
16 card as payment in full or in part for goods or services, the  
17 cardholder to write any personal identification information upon  
18 the credit card transaction form or otherwise.

19 (2) Request, or require as a condition to accepting the credit  
20 card as payment in full or in part for goods or services, the  
21 cardholder to provide personal identification information, which  
22 the person, firm, partnership, association, or corporation accepting  
23 the credit card writes, causes to be written, or otherwise records  
24 upon the credit card transaction form or otherwise.

25 (3) Utilize, in any credit card transaction, a credit card form  
26 which contains preprinted spaces specifically designated for filling  
27 in any personal identification information of the cardholder.

28 (b) For purposes of this section, “personal identification  
29 ~~information,” information~~” means information concerning the  
30 cardholder, other than information set forth on the credit card, and  
31 including, but not limited to, the cardholder’s address and telephone  
32 number.

33 (c) Subdivision (a) does not apply in the following instances:

34 (1) If the credit card is being used as a deposit to secure payment  
35 in the event of default, loss, damage, or other similar occurrence.

36 (2) Cash advance transactions.

37 (3) If any of the following applies:

38 (A) The person, firm, partnership, association, or corporation  
39 accepting the credit card is contractually obligated to provide

1 personal identification information in order to complete the credit  
2 card transaction.

3 (B) The person, firm, partnership, association, or corporation  
4 accepting the credit card in a sales transaction at a retail motor fuel  
5 dispenser or retail motor fuel payment island automated cashier  
6 uses the ~~Zip~~ ZIP Code information solely for prevention of fraud,  
7 theft, or identity theft.

8 (C) The person, firm, partnership, association, or corporation  
9 accepting the credit card is obligated to collect and record the  
10 personal identification information by federal or state law or  
11 regulation.

12 (4) If personal identification information is required for a special  
13 purpose incidental but related to the individual credit card  
14 transaction, including, but not limited to, information relating to  
15 shipping, delivery, servicing, or installation of the purchased  
16 merchandise, or for special orders.

17 (d) (1) This section does not prohibit any person, firm,  
18 partnership, association, or corporation from requiring the  
19 cardholder, as a condition to accepting the credit card as payment  
20 in full or in part for goods or services, to provide reasonable forms  
21 of positive identification, which may include a driver's license or  
22 a California state identification card, or where one of these is not  
23 available, another form of photo identification, provided that none  
24 of the information contained thereon is written or recorded on the  
25 credit card transaction form or otherwise. If the cardholder pays  
26 for the transaction with a credit card number and does not make  
27 the credit card available upon request to verify the number, the  
28 cardholder's driver's license number or identification card number  
29 may be recorded on the credit card transaction form or otherwise.

30 (2) *Notwithstanding subdivision (a), a person, firm, partnership,*  
31 *association, or corporation accepting the credit card may require*  
32 *a cardholder, as a condition to accepting a credit card as payment*  
33 *in full or in part in an online transaction involving an electronically*  
34 *downloadable product, to provide the billing ZIP Code number*  
35 *and numerical portion of the street address associated with the*  
36 *credit card, if used solely for the prevention of fraud, theft, or*  
37 *identity theft. The person, firm, partnership, association, or*  
38 *corporation accepting the credit card shall destroy or dispose of*  
39 *the ZIP Code and street address number information in a secure*  
40 *manner after it is no longer needed for the prevention of fraud,*

1 *theft, or identity theft. The person, firm, partnership, association,*  
2 *or corporation accepting the credit card may not aggregate the*  
3 *ZIP Code and street address number information with any other*  
4 *personal identification information and may not share the ZIP*  
5 *Code and street address number information with any other person,*  
6 *firm, partnership, association, or corporation.*

7 (e) Any person who violates this section shall be subject to a  
8 civil penalty not to exceed two hundred fifty dollars (\$250) for the  
9 first violation and one thousand dollars (\$1,000) for each  
10 subsequent violation, to be assessed and collected in a civil action  
11 brought by the person paying with a credit card, by the Attorney  
12 General, or by the district attorney or city attorney of the county  
13 or city in which the violation occurred. However, no civil penalty  
14 shall be assessed for a violation of this section if the defendant  
15 shows by a preponderance of the evidence that the violation was  
16 not intentional and resulted from a bona fide error made  
17 notwithstanding the defendant's maintenance of procedures  
18 reasonably adopted to avoid that error. When collected, the civil  
19 penalty shall be payable, as appropriate, to the person paying with  
20 a credit card who brought the action, or to the general fund of  
21 whichever governmental entity brought the action to assess the  
22 civil penalty.

23 (f) The Attorney General, or any district attorney or city attorney  
24 within his or her respective jurisdiction, may bring an action in  
25 the superior court in the name of the people of the State of  
26 California to enjoin violation of subdivision (a) and, upon notice  
27 to the defendant of not less than five days, to temporarily restrain  
28 and enjoin the violation. If it appears to the satisfaction of the court  
29 that the defendant has, in fact, violated subdivision (a), the court  
30 may issue an injunction restraining further violations, without  
31 requiring proof that any person has been damaged by the violation.  
32 In these proceedings, if the court finds that the defendant has  
33 violated subdivision (a), the court may direct the defendant to pay  
34 any or all costs incurred by the Attorney General, district attorney,  
35 or city attorney in seeking or obtaining injunctive relief pursuant  
36 to this subdivision.

37 (g) Actions for collection of civil penalties under subdivision  
38 (e) and for injunctive relief under subdivision (f) may be  
39 consolidated.



1 (h) The changes made to this section by Chapter 458 of the  
2 Statutes of 1995 apply only to credit card transactions entered into  
3 on and after January 1, 1996. Nothing in those changes shall be  
4 construed to affect any civil action which was filed before January  
5 1, 1996.

6 ~~SECTION 1. Section 1354 of the Civil Code is amended to~~  
7 ~~read:~~

8 ~~1354. (a) The covenants and restrictions in the declaration~~  
9 ~~shall be enforceable equitable servitudes, unless unreasonable, and~~  
10 ~~shall inure to the benefit of and bind all owners of separate interests~~  
11 ~~in the development. Unless the declaration otherwise states, these~~  
12 ~~servitudes may be enforced by any owner of a separate interest or~~  
13 ~~by the association, or by both.~~

14 ~~(b) A governing document other than the declaration may be~~  
15 ~~enforced by the association against an owner of a separate interest~~  
16 ~~or by an owner of a separate interest against the association.~~

17 ~~(c) In an action to enforce the governing documents, the~~  
18 ~~prevailing party shall be awarded reasonable attorney's fees and~~  
19 ~~costs.~~